

Daniel J. Mulligan (State Bar No. 103129)  
JENKINS MULLIGAN & GABRIEL LLP  
10085 Carroll Canyon Rd., Ste. 210  
San Diego, CA 92131  
Telephone (415) 982-8500  
Facsimile: (415) 982-8515  
dan@jmglawoffices.com

Peter B. Fredman (State Bar No. 189097)  
LAW OFFICE OF PETER FREDMAN  
125 University Ave, Suite 102  
Berkeley, CA 94710  
Telephone: (510) 868-2626  
Facsimile: (510) 868-2627  
peter@peterfredmanlaw.com

Attorneys for Plaintiff  
MARIE GAUDIN, individually,  
and on behalf of others similarly situated

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARIE GAUDIN, individually, and on behalf of)  
others similarly situated, )

Plaintiff, )

v. )

SAXON MORTGAGE SERVICES, INC., )  
A Texas corporation, )

Defendants. )

Case No. C 11-01663-JST

**CLASS ACTION**

DECLARATION OF PETER FREDMAN,  
ESQ. IN SUPPORT OF MOTION FOR  
CLASS CERTIFICATION AND  
APPOINTMENT OF CLASS COUNSEL

Hearing Date: June 20, 2013  
Hearing Time: 1:30 p.m.  
Courtroom 9, 19th Floor, SF  
Hon. Jon S. Tigar

**DOCUMENTS FILED UNDER SEAL**

**THIS IS THE REDACTED VERSION FILED 4/29/2013**

I, PETER FREDMAN, declare as follows:

1. I make this Declaration of my own personal knowledge and, if called to testify, I could and would testify competently to the matters stated herein.

2. I am an attorney duly licensed to practice before all courts of the State of California and before this Court. I am the principal of the Law Office of Peter Fredman, co-counsel for Plaintiff in this action.

3. I make this Declaration in support of Plaintiff's Motion for Class Certification and for appointment of myself and co-counsel as Class Counsel.

### **INDEX AND AUTHENTICATION OF EXHIBITS**

4. Submitted herewith are true and correct copies of the evidentiary exhibits offered in support of Plaintiff's Motion For Class Certification, as follows:

<b><u>Exhibit A</u></b>	Trial Period Plan (TPP), fully executed, which is authenticated in the Declaration of Plaintiff Marie Gaudin at ¶ 10.
<b><u>Exhibit B</u></b>	Morgan Stanley Form 10-K Annual Report to the U.S. Securities and Exchange Commission ("S.E.C.") for the fiscal year ended November 30, 2008 ("Morgan Stanley 10-K FY2008") as downloaded from Morgan Stanley's website at: <a href="http://www.morganstanley.com/about/ir/shareholder/10k113008/10k1108.pdf">http://www.morganstanley.com/about/ir/shareholder/10k113008/10k1108.pdf</a> and <a href="http://www.morganstanley.com/about/ir/shareholder/10k113008/dex21.html">http://www.morganstanley.com/about/ir/shareholder/10k113008/dex21.html</a> Because of the size of the document, only the cited pages are submitted here.
<b><u>Exhibit C</u></b>	HAMP Supplemental Directive 09-01 ("SD 09-01") (April 6, 2009) as published by the U.S. Government in the Program Guidance section of the HAMP Administration website at: <a href="https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/sd0907.pdf">https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/sd0907.pdf</a> Judicial Notice of this document is requested.
<b><u>Exhibit D</u></b>	Documents produced by Saxon in response to discovery in this litigation, ordered by bates number, as follows: -SAXON_0000322-340 is the TPP offer package as delivered by Saxon to Plaintiff. -SAXON_0002035-2036 and 0002214-2215 are slip-sheet placeholders for large Excel spreadsheet files that Saxon produced in native format as discussed below. -SAXON_0002176-2195 is the Saxon Servicer Participation Agreement ("SPA"). -SAXON_0002216 is a corrected and supplemented version of a document originally produced as Exhibit 7 to the Deposition of Saxon 30(b)(6) Designee Julie Shah; this version was produced by Saxon on April 10, 2013 in connection with meet and confer discussions.
<b><u>Exhibit E</u></b>	Deposition of Saxon 30(b)(6) Designee Brent Laurie (cited portions).
<b><u>Exhibit F</u></b>	Deposition of Saxon 30(b)(6) Designee Tim Lightfoot (cited portions).

<b><u>Exhibit G</u></b>	HAMP Supplemental Directive 09-07 (“SD 09-07”) (October 8, 2009) as published by the U.S. Government in the Program Guidance section of the HAMP Administration website at: <a href="https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/sd0907.pdf">https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/sd0907.pdf</a>  Judicial Notice of this document is requested.
<b><u>Exhibit H</u></b>	Saxon letters to Plaintiff, dated March 23, 2010, July 14, 2010, and January 14, 2011, which are authenticated in the Declaration of Plaintiff Marie Gaudin at ¶ 12.
<b><u>Exhibit I</u></b>	Amended Objections and Responses of Saxon Mortgage Services, Inc. to Plaintiff’s First Set of Interrogatories
<b><u>Exhibit J</u></b>	Objections and Responses of Saxon Mortgage Services, Inc. to Plaintiff’s Second Set of Interrogatories
<b><u>Exhibit K</u></b>	Morgan Stanley Press Release (August 9, 2006) as downloaded from the Morgan Stanley’s website, and last viewed on 4/14/2013 at: <a href="http://www.morganstanley.com/about/press/print/3769.html">http://www.morganstanley.com/about/press/print/3769.html</a>
<b><u>Exhibit L</u></b>	In Re Morgan Stanley, Consent Order (April 2, 2012) as downloaded from the Federal Reserve website, and last viewed on 4/14/2013 at: <a href="http://www.federalreserve.gov/newsevents/press/enforcement/enf20130228a1.pdf">http://www.federalreserve.gov/newsevents/press/enforcement/enf20130228a1.pdf</a>  Judicial Notice of this document is requested.

### **DECLARATORY EVIDENCE RE SAXON CLASS DATA**

5. In response to Plaintiff’s discovery requests, Saxon has produced several large Excel spreadsheet files marked SAXON\_0002035-2036 and 0002214-2215 that provide extensive “loan level” detail regarding its borrowers who participated in HAMP. They are identified by unique Financial Asset Identification Numbers (“FAIDs”) that track and cross-reference borrowers across spreadsheets. By way of example, Plaintiff’s FAID is 2557926. *See Ex. J*, Response No. 25, p. 6. Saxon’s data reports that her trial plan was cancelled on March 26, 2010 due to Trial Plan Default. SAXON\_0002035, SAXON\_0002214.

6. SAXON\_0002035-2036 contains nationwide data corresponding to the “HAMP Trial Modification and Official Modification Loan Setup Data Elements” required by HAMP Supplemental Directive 09-01. *See Ex. C* at pp. 27-35. This includes a Property Usage Type field (which is invariably reported as Principal Residence), Borrower Occupancy Status field (which is invariably reported as Borrower Occupied), and financial detail regarding the terms of each loan before and after the TPP, among many other useful data points. *See id.* at pp. 33-34.

7. SAXON\_0002214-2215 includes, among other things, Class member data derived from the data corresponding to the “HAMP Monthly Trial Data Collection Elements” required by HAMP Supplemental Directive 09-01. *See Ex. C* at p. 36

8. SAXON\_0002214 is responsive to Interrogatory No. 24 following meet and confer discussions in which it was agreed, among other things, to preserve the anonymity of the putative Class members prior to certification by relying on FAIDs. *See Ex. J*, Interrogatory and Response No. 24, pp. 5-6. Saxon does not dispute that each FAID corresponds to a loan number and all routinely associated loan servicer documents and information, including, for example, the name and address of the borrower(s), their social security numbers, etc.

- SAXON\_0002214 contains two worksheets in the single native Excel file: one called “Interrogatory 24 Loans” and the second called “Trial Payment Data”.
  - Interrogatory 24 Loans lists the REDACTED unique FAIDs corresponding to each Class member along with field data information for each stating the HAMP denial reason, loan status, etc. *See Ex. J* at pp. 5-6.
  - Trial Payment Data lists for each FAID the effective date and trial payment amount of each TPP and all actual trial payments made by date. *See id.*

9. From this Saxon data set, various facts may be determined by rote calculation. [Because of the way the spreadsheets are configured, some rote reconfiguration of the spreadsheets was also required]. The data shows, for example, that the average Class trial period payment amount was REDACTED per Class member per month and that the total payments actually received from the Class subsequent to the TPP agreements was REDACTED. The latter figure is overstated, however, because for a small minority of FAIDs the data inadvertently captures amounts that are obviously not trial payments, such as six figure sums recovered following the liquidation of a property through foreclosure. Also, the data shows some FAIDs began making higher monthly payments after a series of trial period payments did not result in modification.

10. Although REDACTED REDACTED represents Saxon’s literal discovery response, I wanted to generate a more accurate estimate of the total trial period payments made by the Class. To do so, I manually deleted the obviously erroneous entries for each FAID, which resulted in a

total of just over REDACTED. As a cross-check, for 10% of the FAIDs, I deleted any payment that did not represent a continuous trial period payment amount following the inception of the TPP, which extrapolated to just under REDACTED. As Saxon only produced SAXON\_0002214 on March 29, 2013, there was not time to engage in more thorough scrubbing and analysis of the data, but it is obviously manageable. For the vast majority of the FAIDs, individualized calculation of the actual trial payments requires no such process. For the minority, the idiosyncratic payments are easily spotted and deleted.

11. This data also allows for rote calculation of the average number of months that each Class member made trial payments. Saxon's responses show that each Class member made trial payments for an average of approximately REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED average trial payment amount). See ¶¶ 8, 10 *supra*. In contrast, if Saxon had limited the Class member trial periods to the three months set forth in the TPP before denying them modifications, then it would have collected only REDACTED REDACTED average trial payment amount x 3 months). See ¶¶ 9-10 *supra*.

12. To be clear, Plaintiff provides the aforementioned aggregates and averages for descriptive purposes, not as a substitute to individualized calculations. On the contrary, for each FAID the stated trial period payment amount and each actual trial period payment amount and date are readily apparent on the Saxon spreadsheets.

### **ATTORNEY QUALIFICATIONS**

13. I am an attorney with substantial experience representing consumers and borrowers in class actions and unfair business practices litigation, among other things. A 1995 graduate of U.C.L.A. Law School, I have been a California litigator since 1997, with a concentration on complex litigation and class actions since about 2004. I am a member in good standing of the California bar, as well as the United States District Courts for the Northern and Central Districts of California.

14. My class action experience includes acting in a lead or substantial role in several certified class actions, including *Bates v. KB Home*, Alameda County Superior Court No. RG08-384954 (appointed co-class counsel in contested motion for certification 12/29/09; settlement

judgment entered 6/16/10); *Franklin v. The Villas Parkmerced*, San Francisco County Superior Court No. CGC06456720 (co-class counsel per settlement class certification 4/29/08); *Keck v. Bank of America*, U.S.D.C. Northern District of California Case No. C 08-01219 CRB (co-class counsel per settlement class certification 7/15/09); *Bibo v. Federal Express*, U.S.D.C. Northern District of California Case No. C07-2505 TEH (class certification granted 4/29/09); *Gellis v. Verizon Wireless*, U.S.D.C. Northern District of California Case No. CV 07-03679 JSW (class settlement 11/16/12). *See also Reyes v. Wells Fargo*, U.S.D.C. Northern District of California Case No. CV 10-01667 JCS (class settlement approval pending); *Jackmon v. Wells Fargo*, U.S.D.C. Northern District of California Case No. CV 11-03884 CRB (stayed pending related case appeal).

15. Since 2008, I also have extensive experience in residential mortgage and loan modification issues in both class and individual contexts. By way of example, I have on several occasions successfully litigated to prevent or reverse foreclosures and obtain reversals of denials of HAMP loan modifications for individual clients; I recently testified at deposition as a retained expert on mortgage modification; I recently obtained appellate affirmance of a case in which I successfully defended a debt collector's attempt to recover a 2<sup>nd</sup> mortgage deficiency and obtained a large attorney fee award on the cross complaint brought under the Rosenthal and federal Fair Debt Collections Practices Acts (*Heritage Pac. Fin. v. Monroy*, 2013 Cal. App. Unpub. LEXIS 2360 (Cal. App. 1st Dist. Mar. 29, 2013)) (publication requests pending); and I have litigated several putative Class actions involving mortgage issues similar to those presented in this case. *See, inter alia, Reyes and Jackmon supra.*

16. I have no actual or potential conflicts with members of the Class and will diligently prosecute this case.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this 15<sup>th</sup> day of April, 2012 at Berkeley, California.

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/s/ Peter Fredman